

Charles M. Cohen, Ph.D. (Vol. II) - 12/18/03

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VOLUME II  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

BRUCE ALLEN LILLER, et al.

Plaintiffs  
vs.

CIVIL ACTION NO.

ROBERT KAUFFMAN, et al

MJG 02-CV-3390  
(Consolidated with MJG  
02-CV-3391)

Defendants and Third-  
Party Plaintiffs

and

ROGER LEE HELBIG

Third-Party Defendant

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Volume II of the deposition of CHARLES M.  
COHEN, PH.D. was held on Thursday, December 18, 2003,  
commencing at 4:05 P.M., at the Law Offices of Lord &  
Whip, 36 South Charles Street, 10th Floor, Baltimore,  
Maryland 21201 before Louisa B. McIntire-Brooks, Notary  
Public.

APPEARANCES:

ARNOLD F. PHILLIPS, ESQUIRE (via tele.)  
On behalf of Plaintiffs

JENNIFER S. LUBINSKI, ESQUIRE  
On behalf of Defendants

REPORTED BY: Louisa B. McIntire-Brooks, RPR, CSR

EXHIBIT

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<p style="text-align: right;">32</p> <p>1 Q I take it the Pennsylvania system is set up 2 a little bit different from Maryland's? 3 A Well, I don't know Maryland's system. 4 Q If you're called as an expert with, let's 5 start with Bruce Liller, if you are called as an expert 6 witness with respect to Bruce Liller's case, what 7 opinions do you expect to offer? 8 A The opinion would -- <del>I would offer he had</del> 9 <del>the earnings capacity of \$23.77 per hour working as a</del> 10 <del>construction supervisor or superintendent. Since the</del> 11 <del>accident, his earnings capacity has been reduced to \$15</del> 12 <del>per hour working in the family construction business.</del> 13 <del>He has past and future losses associated with this loss</del> 14 <del>of earnings capacity.</del> 15 Q Do you feel that a rate of \$23.77 an hour 16 is appropriate given the fact that Mr. Liller was not, 17 in fact, earning that rate prior to this accident? 18 A Yes. 19 Q Why is that? 20 A Well, we're talking about earnings 21 capacity. <del>He gives a history of earning \$18 an hour in</del></p>	<p style="text-align: right;">34</p> <p>1 engaged a laborer who follows Mr. Liller around and 2 assists him with physical activities that Mr. Liller is 3 unable to perform and that that laborer is paid \$8 an 4 hour in order to do that? 5 A Yes. 6 Q Is that your understanding? 7 A That's my understanding. 8 Q Is it your understanding that that \$8 an 9 hour is deducted from Mr. Liller's hourly wage? 10 A No. 11 Q This laborer is being paid \$8 an hour 12 independent of Mr. Liller's hourly wage of \$15 an hour; 13 is that correct? 14 A That's my understanding. 15 Q Would you agree with me that it would be 16 possible to have another employee -- well, let me 17 rephrase that. Have you attended <u>any work sites with</u> 18 <u>Bruce Liller?</u> 19 A No. 20 Q You have never had the opportunity to see 21 Mr. Liller actually at a construction site?</p>
<p style="text-align: right;">33</p> <p>1 South Carolina doing that kind of work. That's in the 2 range appropriate for that kind of job and therefore, 3 we use the mean wage for that kind of work. And that 4 is why it's the appropriate earnings capacity, not -- 5 based on his earnings capacity, not on his earnings. 6 Q Would you agree with me that wages for an 7 employee are based on a number of factors including the 8 particular employee's skills and qualifications? 9 A Yes. 10 Q Job performance? 11 A Yes. 12 Q You would agree with me doctor that you're 13 not a physician; correct? 14 A That's correct. 15 Q And because you're not a physician, you 16 cannot state that any physical complaints Mr. Liller 17 has currently are or are not causally related to the 18 accident? 19 A That's correct. 20 Q It's my understanding that Bruce Liller has 21 engaged or his family's construction business has</p>	<p style="text-align: right;">35</p> <p>1 A That is correct. 2 Q You would not be able to testify with 3 respect to the nature of the work that this laborer is 4 actually performing; is that correct? 5 A Other than what Bruce told me. 6 Q Correct. 7 A Correct. I have no independent knowledge 8 of it. 9 Q So, you would have no opinions with respect 10 to whether or not it was appropriate to hire an 11 employee specifically to assist Mr. Liller at the job 12 site in that fashion. Is that correct? 13 A Well again, I have no direct -- I did not 14 observe this. Based on what Bruce tells me would be 15 appropriate. 16 Q Why is that? 17 A Well, he indicates that he is supervising 18 on the job, that he goes around and that there is a 19 need for physical activity and when that need arises, 20 he's there as a laborer available to do it. 21 Q But, you would not be able to say that it</p>

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<p style="text-align: right;">48</p> <p>1 Q Do you know if that's been done?</p> <p>2 A I don't know.</p> <p>3 Q Do you know if he's received psychiatric</p> <p>4 treatment for depression or anxiety?</p> <p>5 A No, I don't.</p> <p>6 Q How about psychotherapy or cognitive</p> <p>7 retraining?</p> <p>8 A No. I don't know if he has.</p> <p>9 Q I understand. Do you know if he is taking</p> <p>10 psychotropic medications at this point?</p> <p>11 A No, I don't know.</p> <p>12 Q Do you have any opinions with respect to</p> <p>13 the type of psychotropic medication that will be</p> <p>14 required?</p> <p>15 A Well, I'm not a psychiatrist. However, I</p> <p>16 do work with psychiatrists and with MDs and my</p> <p>17 impression is that he would need an antidepressant</p> <p>18 medication, perhaps an antianxiety medication, perhaps</p> <p>19 a combination of the two.</p> <p>20 Q Do you have any opinions with respect to</p> <p>21 the cost of the therapies that you recommended?</p>	<p style="text-align: right;">50</p> <p>1 complaints related to this accident?</p> <p>2 A No, I don't.</p> <p>3 Q I note that in your report you say that the</p> <p>4 goal of the treatments that you're recommending would</p> <p>5 be to get him back to the functional levels that he was</p> <p>6 when he left the hospital. Is it your opinion that</p> <p>7 Michael Liller's condition has gotten worse since he</p> <p>8 left the hospital?</p> <p>9 A Yes.</p> <p>10 Q In what way?</p> <p>11 A Compared to the records that I read, this</p> <p>12 young man appears to be markedly more depressed than</p> <p>13 was noted previously. He appears to be suffering from</p> <p>14 some anxiety. His cognitive functioning to the limited</p> <p>15 degree that I evaluated them on the mental status</p> <p>16 examination appear to be poorer than they were when he</p> <p>17 left. He also started drinking again, but indicated</p> <p>18 that he was in early remission for that. So, for those</p> <p>19 reasons, or he appeared to be functioning a good deal</p> <p>20 poorer than he did when he left the rehab program.</p> <p>21 Q Do you have any opinions with respect to</p>
<p style="text-align: right;">49</p> <p>1 A Well, yes, I do. These are based on my</p> <p>2 experience. I know, I talked to Mr. Walstra, and I</p> <p>3 know you had a discussion regarding the figures he came</p> <p>4 up with. I don't have those figures right in front of</p> <p>5 me. I think the neuropsych was a thousand and I think</p> <p>6 he told me that the average price of the therapy was,</p> <p>7 he used \$80 an hour. Those figures in my experience</p> <p>8 are very conservative and if one would do a more</p> <p>9 involved study of that, I can assure you that there</p> <p>10 would be markedly increased prices noted.</p> <p>11 Q But, you would agree with me that as far as</p> <p>12 you know, no physician has ordered any of these</p> <p>13 therapies for Mr. Liller?</p> <p>14 A Well, I do note that there was some</p> <p>15 recommendations that -- well, it is certainly not</p> <p>16 recently. I don't think there is -- well, let me put</p> <p>17 it this way: I didn't see anything about another</p> <p>18 neuropsych being requested or any therapy, no, or</p> <p>19 medication.</p> <p>20 Q Do you know if Michael Liller is currently</p> <p>21 receiving treatment with a physician for any of his</p>	<p style="text-align: right;">51</p> <p>1 the significance of Michael Liller's alcohol</p> <p>2 consumption either pre-accident or post-accident?</p> <p>3 A Do I -- what was your question?</p> <p>4 Q Do you have any opinions with regard to the</p> <p>5 significance of Michael Liller's alcohol consumption</p> <p>6 either before the accident or after the accident?</p> <p>7 A Well, before the accident, he indicates</p> <p>8 that he was clean and sober for eight months. So, if</p> <p>9 in fact that is the case, it would -- it would be a</p> <p>10 positive sign and would not be a negative influence on</p> <p>11 his condition. Afterwards, certainly anyone with</p> <p>12 sustained cognitive disorder shouldn't be drinking.</p> <p>13 I'm glad to hear, at least he told me at the time, that</p> <p>14 he had stopped drinking for a month. And that would</p> <p>15 again be a positive sign. Certainly if he had</p> <p>16 continued to drink, it would be certainly a negative</p> <p>17 indication.</p> <p>18 Q Do you have any opinions with respect to</p> <p>19 the appropriateness of Mr. Liller's discharge from the</p> <p>20 Care program? Let me clarify that. Was it appropriate</p> <p>21 to discharge him when they discharged him?</p>

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<p style="text-align: right;">52</p> <p>1 A Well, I really have no opinion. I -- it  2 appeared to be appropriate. I would have probably made  3 sure, if I were in charge, that follow-up would have  4 been done on a regular basis. Not just a total  5 release. So, the time of the release may have been  6 appropriate, but for my thinking, there should have  7 been built-in periods where he would return or at least  8 observations be made to see how he actually does after  9 release, not just released to the parents.  10 Q What kind of follow-up would be required?  11 In other words, would there be follow-up with the  12 neuropsychiatrist, would there be follow-up with -- or  13 I think it was a neuropsychologist.  14 A Correct.  15 Q Would there be follow-up with the Care  16 program, the Care program itself, I think, was staffed  17 by RNs and therapists.  18 A Um-hum. Well, the actual people that would  19 do the follow-up is not as important as the system  20 itself. My fielding is that certainly the Care  21 program, it would have been very good for them to do a</p>	<p style="text-align: right;">54</p> <p>1 you describe in your report, are you able to -- let me  2 rephrase that from the beginning. Considering the  3 treatment that you have described in your report, are  4 you able to say to a reasonable degree of medical  5 probability that Mr. Liller's condition would improve?  6 A The best I'm willing to say is that I would  7 hope that that would be the case. How much he would  8 improve is another question. Certainly in these cases  9 when there is dramatic brain damage and it's over a  10 year, the functioning in terms of cognitive  11 functioning, you see very little improvement after a  12 year. I think the better hope would be the issues of  13 depression and anxiety hopefully would improve.  14 Q Is it your opinion that Mr. Liller's  15 depression and anxiety are causally related to the  16 accident?  17 A Well, it certainly is secondary to the  18 accident. The best judgment of the people who were  19 seeing him was at the most he was mildly depressed  20 early on. The Care program indicated that he did not  21 appear to have any emotional kinds of problems. My</p>
<p style="text-align: right;">53</p> <p>1 systematic follow-up of Michael.  2 Q Are you able to say or do you have any  3 opinions to a reasonable degree of probability that if  4 Michael Liller had gotten that follow-up therapy  5 following his discharge from the Care program, his  6 condition today would be improved?  7 A Well, I'd be speculating. One always hopes  8 that it would have improved. I don't know that for the  9 fact. He did appear to improve with the treatment at  10 the Care program. So, one would hope that he would  11 have improved. But, I cannot state that for certain.  12 Q Do you believe that Michael Liller is at  13 MMI? Do you know what MMI means; Doctor?  14 A I did. Medical -- at the high point --  15 Q Maximum medical improvement?  16 A Yeah, maximum medical improvement. No, I  17 don't believe that. No, I strong -- you know, as my  18 report indicates, I felt that he needed more treatment,  19 a good deal more treatment. So, I do not feel that  20 he's at maximum medical benefit.  21 Q Do you believe that with the treatment that</p>	<p style="text-align: right;">55</p> <p>1 impression is that the depression, anxiety developed  2 afterwards as he found he was unable to function as  3 well as he had hoped. So, I would consider it  4 secondary to the trauma.  5 Q But, you're not able to say whether or not  6 it was caused by the trauma?  7 A Well, cause is a difficult statement to  8 make. I would say that it's secondary to. I think  9 that's a better way of describing it.  10 Q You performed for Michael Liller or you had  11 him take an MMPI?  12 A Yes.  13 Q Did you have Bruce Liller take an MMPI?  14 A No.  15 Q What was the basis for your decision to  16 have Michael Liller take an MMPI and not Bruce?  17 A Well, Bruce, in terms of the interview, had  18 only mild indications of depressive kinds of symptoms  19 and it did not appear to me to be worthwhile to spend  20 his time or the money because there wasn't enough  21 evidence to make the MMPI a relevant instrument to give</p>

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